

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSEPH BREELAND,)	
)	
Plaintiff,)	Case No. 1:11-cv-148-SJM-SPB
)	
v.)	
)	
SGT. SISSEM,)	
)	
Defendant.)	

MEMORANDUM ORDER

Plaintiff's complaint in this civil rights action was received by the Clerk of Court on July 18, 2011 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on May 14, 2013 [52], recommends that Plaintiff's motion for summary judgment [24] be denied and Defendant's motion for summary judgment [43] be denied. The parties were given fourteen (14) days within which to file any objections to the R&R. Plaintiff filed his objections [54] on May 28, 2013. On May 31, 2013, Plaintiff filed a brief in support of his objections [55]. No objections have been filed to date from the Defendant.

After *de novo* review of the complaint and documents in the case, together with the Report and Recommendation, Plaintiff's objections to the R&R, and his brief in support of objections, the following order is entered:

AND NOW, this 3rd Day of June, 2013,

Inasmuch as the merits of Plaintiff's Eighth Amendment claim turn on genuinely disputed issues of material fact, IT IS ORDERED that the Plaintiff's motion for summary judgment [24] shall be, and hereby is, DENIED and the Defendant's motion for summary judgment [43] shall likewise be, and hereby is, DENIED.

The Report and Recommendation of Magistrate Judge Baxter, filed on May 14, 2013 [52], is adopted as the opinion of this Court.

In light of the foregoing and the fact that the Plaintiff filed objections and a supporting brief in response to the Report and Recommendation which this Court considered on a *de novo* basis, IT IS FURTHER ORDERED that Plaintiff's Motion for Clarification on Proceedings [53] shall be, and hereby is, DENIED as moot.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
Chief United States District Judge

cm: All parties of record

U.S. Magistrate Judge Susan Paradise Baxter